

Ram Rattan

Vs

State of Punjab

Criminal Appeal No. 136 of 1972

(Syed M. Fazal Ali, N. L. Untwalia JJ)

12.01.1979

JUDGMENT

UNTWALIA, J. -

1. The appellant in this appeal has been convicted under Section 9(a) of the Opium Act and has been sentenced to undergo R.I. for two years and to pay a fine of Rs. 2000, in default some more imprisonment. By special leave, he has filed this appeal.

2. A raid was conducted on the premises bearing No. F 16, Sarafa Nagar, Ludhiana. The prosecution case is that six packets containing 48 1/2 kilograms of opium were recovered from the store-room of the house. The recovery made in the raid is not challenged. What was argued on behalf of the appellant and reiterated before us was that the prosecution has not proved that the appellant was in conscious possession of the opium recovered from the house. The raid was conducted when the appellant was not there in the house. The only person present then was Janardhan Shankar, PW 1. According to his evidence, the appellant had gone to Vaishno Devi five or six days before the raid and he was not present in the house when the recovery was made. According to his evidence, the appellant was the tenant of the house. But other witnesses did not support him on this point. According to the evidence of the landlord PW 6 the appellant was not the tenant. PW 6 was allowed to be cross-examined by the State counsel, as, apparently there was some contradiction in his testimony before the Court and his statement before the police. Even so his evidence in court, as it is, does not support the prosecution allegation that the appellant was a tenant of the house. On the other hand, according to PW 6, the house at the time of its construction was let out by his servant Som Nath to a tenant. Som Nath was examined as DW 2. According to his evidence, the house was let out to one Bawa Ram. This Bawa Ram is the uncle of the appellant. There are some materials in the records of this case to cause suspicion against the appellant that probably he was aware of the nefarious activities which were going on in this house by storing such huge quantity of opium. But then on mere suspicion no conviction could be maintained. There is nothing to indicate that the quantity of opium recovered from the house was in the conscious possession of the appellant or that even the house was recovered when the appellant was not present even in the vicinity of the house much less in the house itself. We are, therefore, of the opinion that the High Court committed an error of law in maintaining the conviction of the appellant. He deserves to be acquitted. We, accordingly, allow the appeal, set aside his conviction and sentence. He is discharged from the bail bonds. Fine if paid may be refunded.

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